



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JOHN D. CHERRY, JR.
LT. GOVERNOR

March 9, 2007

The Honorable Andy Dillon
Speaker of the House
Michigan House of Representatives
P.O. Box 30014
Lansing, MI 48909

Dear Speaker Dillon:

The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (the "Gun Lake Tribe") has now won a decisive victory in the federal courts and it appears that placement of the Tribe's Michigan land into federal is imminent. Once the Tribe's land goes into trust, the Tribe will almost certainly have the right under federal law to open a commercial gaming facility -- with or without a compact with the state. Given these circumstances it is in the best interest of the state to enter into a gaming compact with the Tribe to ensure that the state has both some say in the operation of the facility and an opportunity to share in its revenues. I write to you today to advise you that I have reached agreement with the Gun Lake Tribe on a proposed Class III Gaming Compact under the provisions of the federal Indian Gaming Regulatory Act, 25 U.S.C. §2701 *et seq.* Consistent with the process approved by the Michigan Supreme Court in *Taxpayers of Michigan Against Casinos v State*, 471 Mich 306; 685 NW2d 221 (2004), the proposed compact by its terms requires the concurrence of the Michigan Legislature by resolution. For the reasons described below, I believe that legislative approval of this proposed compact serves the best interests of the public.

In December of 2002, each house of the Michigan Legislature passed a resolution endorsing a proposed gaming compact with the Gun Lake Tribe; that proposed 2002 compact was substantially identical to the compacts previously entered into with four other tribes in 1998. Before leaving office my predecessor declined to sign the proposed 2002 Gun Lake compact, citing what he described as unfounded allegations of conflict of interest, but strongly recommended that his successor approve a compact with the Tribe. He reasoned that, under existing federal law, Gun Lake will almost certainly be allowed to open a commercial gaming operation after its lands are placed in federal trust, and will be able to do so even if the state fails or refuses to negotiate a gaming compact; given this reality, he concluded that it is in the best interest of the state to enter into a compact with the

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Tribe and thereby have at least some say in the nature and scope of the tribal gaming operation.

I agree with my predecessor's assessment that the state is better served by entering into a compact with the Gun Lake Tribe than by refusing to do so. But I declined to sign the 2002 proposed compact for several reasons.

First, recent experience with other tribes in southwest Michigan had shown that the process of having land taken into federal trust can involve years of delay – and much can change during those years. Given this reality, I believed that the 2002 compact was premature and that it would be more prudent to wait until the Gun Lake Tribe was much closer to having its lands in trust. That time has now arrived: Gun Lake has won a decisive victory in the federal courts and trust status for its land now appears to be imminent, more a matter of weeks or months rather than years away.

Secondly, I believed it was possible to improve upon our experience with prior compacts and to obtain more favorable terms with the Gun Lake Tribe. That, too, has been accomplished. The proposed compact I transmit to you today improves upon the version previously approved by the Legislature in 2002 in many important respects including the following:

1. Larger and more stable revenue sharing payments: As compared to the 2002 proposal, we have negotiated significant improvements in the amount of the payments that will be made to the state and, of at least equal importance, have significantly reduced the risk that those payments will be terminated by future changes Michigan's gaming environment. These changes fall into three primary areas:

a. Amount of payments. The 2002 draft required the Tribe to pay the state 8% of the net win from electronic games of chance (slot machines), but only so long as the state permits no other persons to operate electronic games of chance within the state (other than the existing Detroit casinos and the other tribal casinos). The Tribe has agreed to increase the amount of its revenue sharing payments based on a sliding scale and will now pay the state:

- (i) 8% of net win up to \$150M
- (ii) 10% of net win between \$150M and \$300M

(iii) 12% of net win in excess of \$300M

b. More limited exclusivity areas. Of equal importance, the Tribe has agreed to reduce the geographic area that is subject to gaming exclusivity. Past compacts have required gaming exclusivity on a *statewide* basis as a condition of tribal payments to the state. As a consequence, the approval by the voters of casinos in Detroit had the effect of eliminating the revenue sharing obligation of tribal casinos, even those located as far away as the western Upper Peninsula whose markets were, arguably, unaffected by the Detroit casinos. The proposed new Gun Lake compact discards this statewide approach and instead conditions the Tribe's revenue sharing payments on exclusivity within a much more limited "competitive market" consisting of 9 counties in the immediate vicinity of the proposed casino (Allegan, Barry, Calhoun, Eaton, Ingham, Ionia, Kalamazoo, Kent, and Ottawa Counties). This means that, for example, even if the voters approve a new gaming facility elsewhere in the state, it will not affect the Tribe's payment obligation unless the new gaming facility is located within the Tribe's defined "competitive market."

c. Lottery. Finally, the revenue sharing provisions deal very explicitly with the Michigan Lottery in order to avoid future disagreements over whether Lottery activities (such as Club Keno) affect the Tribe's exclusivity payments. Under the agreement, Lottery self-service devices used to sell tickets and/or display drawing results are not considered to be "electronic games of chance" and, thus, do not affect the Tribe's payment obligation so long as no more than five machines are used at any one establishment and so long as a new result is displayed no more often than every three minutes. Moreover, if Lottery does begin operating "electronic games of chance" as defined by the compact, revenue sharing payments are reduced by only 50% instead of being eliminated entirely and the reduction remains in effect only so long as Lottery continues to operate the offending games.

2. Age limitations. The age limit for participating gaming, and for employees engaged in gaming related work, is increased to 21. Prior compacts set this limit at age 18.

3. Reimbursement of State Monitoring Expenses. Payments to the state to cover the cost of state monitoring activities are increased to \$75,000 or .05% of net

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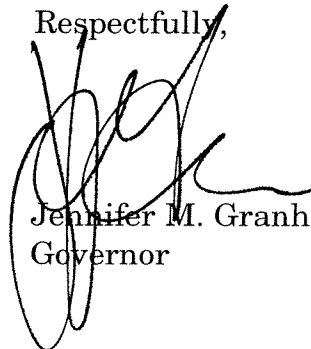
win, whichever is greater; the 1998 compacts required a maximum of only \$50,000.

4. Inspection of Records. The language giving the state the right to inspect tribal gaming records has been clarified to assure that we can inspect not only class III gaming records but also all other records relevant to the commitments contained in the compact.

5. State taxes. The Tribe has agreed to collect applicable sales, use, and tobacco taxes on sales to non-tribal members at its casino; to withhold income taxes from casino employees who are subject to the state income tax; and to disclose to the state the gaming of winnings of non-tribal members.

For all of these reasons, I believe that legislative approval of the proposed compact with the Gun Lake Tribe is in the best interests of the public and I urge both houses of the Legislature to indicate their endorsement of that compact by joint resolution.

Respectfully,



Jennifer M. Granholm
Governor

Enclosure

OLC:JMG:JW:ab